

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-6055

Signed

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

FRANCESCO GALESI,

Plaintiff-Appellee

v.

UNITED STATES OF AMERICA,  
INTERNAL REVENUE SERVICE,

Defendants-Appellants

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF VERMONT

APPENDIX



SCOTT P. CRAMPTON,  
Assistant Attorney General,

GILBERT E. ANDREWS,  
CARLETON D. POWELL,  
Attorneys,  
Tax Division,  
Department of Justice,  
Washington, D. C. 20530.

Of Counsel:

GEORGE W. F. COOK,  
United States Attorney.

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PLAINTIFFS

Galesi, Francesco

DEFENDANTS

United States of America  
Internal Revenue Service

APR 23 9 09 AM '76  
MAIL UNIT

CAUSE

Petitioner requests removal from State Court to US District Court.  
Pltf. requests declaratory judgment re rights of parties to real estate re  
tax liens.

ATTORNEYS

Williams, Witten, Carter & Wickes, Esqs.  
115 Elm St., Bennington, Vt.  
442-8111

U. S. Attorney  
Jerome F. O'Neill, Ass't. USA  
  
V. James Ferraro  
Dept. of Justice  
Tax Division  
Washington, D.C. 20536

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	APR 5 1975
				JS-6	FEB 5 1976



Civ. 75-85 Galesi vs. USA

PROCEEDINGS

1975

- Apr. 1 1 Filed Petition for Removal.
- May 5 2. Filed Government's Answer.
- Sept. 29 3. Filed Plaintiff's Motion to Amend Pleadings.
- " " 4. " Plaintiff's Motion for Summary Judgment.
- " " 5. " Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment and Motion to Amend Pleadings.
- " 30 At the call of the calendar before Judge Holden, it was Ordered: case passed.
- Oct. 22 6. Filed Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment.
- " " 7. " Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment and in Support of the Government's Cross Motion for Summary Judgment.
- Nov. 14 8. Filed Notice of Appearance of V. James Ferraro, Esq. for Government.
- " " In open Court before Judge Holden. Marshall Witten, Esq. for Plaintiff; James Ferraro, Esq. for Defendant.
- " " Hearing on Plaintiff's Motion to Amend Pleadings. No objection by Mr. Ferraro.
- " " ORDERED: Motion granted.
- " " Hearing on Plaintiff's Motion for Summary Judgment and Cross Motion for Summary Judgment.
- " " Statements made to Court by Mr. Witten, followed by Mr. Ferraro.
- " " Decision reserved.

1976

- Jan. 12 9 Filed Memorandum and Order--Deft's Motion for Summary Judgment denied Pltf's Motion for Summary Judgment granted. The Clerk is directed to enter an order accordingly. Mailed copy to attys.
- " 15 10 " Judgment on Decision by the Court--Deft's Motion for Summary Judgment is denied; Pltf's Motion for Summary Judgment is granted. Mailed copy to attorneys.
- Mar. 10 11 " Government's Notice of Appeal. Mailed copy to U. S. Attorney, Williams, Witten, Carter & Wickes, Esqs., Vincent J. Ferraro, Esq., Judge Holden, Court Reporter and Clerk, U. S. Court of Appeals for the Second Circuit.
- Apr. 6 12 " Original transcript of hearing on November 14, 1975.
- " " Mailed record on appeal to U. S. Court of Appeals for the Second Circuit, N.Y., N.Y. Attys. notified.

STATE OF VERMONT

[Filed February 27, 1975]

BENNINGTON COUNTY, SS.

FRANCESCO GALESI

V.

Bennington Superior Court  
Docket No. \_\_\_\_\_

UNITED STATES OF AMERICA,  
INTERNAL REVENUE SERVICE  
Defendant

COMPLAINT FOR DECLARATORY  
JUDGMENT

COMES, NOW, FRANCESCO GALESI by his attorneys, Williams, Witten, Carter and Wickes and brings this his complaint for Declaratory judgment pursuant to 12 VSA Chapter 167, and alleges as follows:

1. On September 10, 1973 the Chemical Bank, a banking institution with a place of business in the city, county and State of New York, as Plaintiff, filed a petition for foreclosure in the Manchester, Vermont Land Records, involving docket No. C-94-73Be Bennington County Court, against Equinox House, Inc. et als, seeking to foreclose the equity of redemption of the mortgagor, Junior Mortgagees, and all attaching creditors and junior lienors, in 1042 acres, more or less, with appurtenances, situated in Manchester in the County of Bennington and State of Vermont.

2. Subsequent to said filing of September 10, 1973, to wit: on September 18, 1973, December 7, 1973, and March 29, 1974, the Internal Revenue Service filed tax liens in the Manchester Land Records against the Equinox House, Inc., Mortgagor in said action.

3. 12 VSA 4523(b) provides in part:



"The filing[of the complaint] shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of the foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties to the original action."

4. On June 12, 1974 Plaintiff, the holder of an equity of redemption in the property as assignee of a third mortgagee, Sports Investors, Inc., redeemed the premises for \$1,281,045.54 as provided in the judgment order of foreclosure in said action, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

5. Thereafter, the Internal Revenue Service posted notice of public sale of the said real estate, said sale to be held September 30, 1974 at 11:00 A.M. in Manchester, claiming that the judgment order of foreclosure, Exhibit A, did not cut off its rights to enforce its lien against the property to collect taxes owed by the Equinox House, Inc.

6. Said sale was adjourned to a date uncertain at the request of Plaintiff's attorneys.

7. On November 26, 1974 at 1:00 P.M. Plaintiff's attorneys met with a Mr. Walter Otten of the Burlington office of the Internal Revenue Service. At that meeting Mr. Otten advanced on behalf of the government the proposition that the three liens on the Manchester Land Records were valid and entitled the

United States of America to levy on the real estate described in Exhibit A to collect the delinquent taxes owed by the Equinox House, Inc., mortgagor in the original action.

8. The conduct of the Internal Revenue Service in attempting to sell Plaintiff's property at public sale, and reaffirming thereafter to Plaintiff's attorneys its right to levy against the property, has created a controversy between the Plaintiff and the defendant and caused an uncertainty with respect to Plaintiff's title to the real estate described in Exhibit A.

WHEREFORE, Plaintiff asks the Court to :

- (a) Declare the rights of the parties with respect to said real estate described in Exhibit A.
- (b) Declare the status and validity or lack of validity of defendant's tax liens recorded in the Manchester Land Records;
- (c) Grant such other relief as to the Court shall seem meet.

Dated at Bennington, Vermont this 27 day of February, 1975.

FRANCESCO GALES

by WILLIAMS, WITTEN, CARTER & WICKES  
HIS ATTORNEYS

by R. Marshall Witten

R. Marshall Witten, a member of the firm



UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

[Filed April 1, 1975]

FRANCESCO GALESI

v. .

UNITED STATES OF AMERICA,  
INTERNAL REVENUE SERVICE

CIVIL NO. \_\_\_\_\_

PETITION FOR REMOVAL PURSUANT TO 28 U.S.C.  
SECTION 1442(a)(1) and 28 U.S.C. SECTION 1446

The United States of America, by and through George W. F. Cook, United States Attorney for the District of Vermont, brings this petition pursuant to 28 U.S.C. Sections 1442(a)(1) and 1446 and in support thereof states as follows:

1. The United States of America is a defendant in a civil action in Bennington Superior Court, State of Vermont, in an action entitled Francesco Galesi v. United States of America, Internal Revenue Service. The docket number is C35-75BC.
2. On March 3, 1975, plaintiff served a copy of the Summons, and a Complaint For Declaratory Judgment upon George W. F. Cook, United States Attorney, for the District of Vermont.
3. On March 6, 1975, plaintiff served a copy of a Summons and Complaint upon the Attorney General of the United States.

4. Said action, Francesco Galesi v. United States of America, is a civil action, commenced in the State courts of Vermont and pursuant to 28 U.S.C. Section 1442(a)(1) may be removed to the United States District Court for the District of Vermont.

5. Pursuant to 28 U.S.C. Section 1446(a), there is attached hereto a copy of all process which has been served upon the United States.

6. No bond is required to be filed for the purpose of effecting this removal, this being in accordance with the requirements of 28 U.S.C. Section 1446(d).

7. Simultaneously with the filing of this petition, the United States has given written notice of this petition for removal to the said Francesco Galesi, through his attorney, R. Marshall Witten of Williams, Witten, Carter & Wickes and to the Bennington Superior Court, Bennington, Vermont, by mailing copies of this petition as follows:

R. Marshall Witten, Esq.  
Williams, Witten, Carter & Wickes  
115 Elm Street  
Bennington, VT 05201

and

Clerk of the Court  
Bennington Superior Court  
Bennington, VT 05201

WHEREFORE, your petitioner prays that the action entitled Francesco Galesi v. United States of America, now pending in the Bennington Superior Court, Bennington,



Vermont, be removed therefrom to the United States District Court for the District of Vermont.

Dated at Rutland, in the District of Vermont,  
this 31st day of March, 1975.

UNITED STATES OF AMERICA

GEORGE W. F. COOK  
UNITED STATES ATTORNEY

By:  
JEROME F. O'NEILL  
ASSISTANT U.S. ATTORNEY

STATE OF VERMONT  
COUNTY OF RUTLAND

}

Subscribed and sworn to before me this 31st day  
of March, 1975.

Mary A. O'Rourke, Notary Public  
My commission expires 2/10/79

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

FRANCESCO GALESI,

Plaintiff

v.

UNITED STATES OF AMERICA,  
et al.,

Defendants

[Filed May 5, 1975]

A N S W E R

The United States of America, by its attorney, George W. F. Cook, United States Attorney for the District of Vermont, states as follows:

FIRST DEFENSE

1. It affirmatively alleges that this Court lacks jurisdiction to entertain this suit since plaintiff has not complied with the statutory requirements contained in 28 U.S.C. 2410. Plaintiff, in essence, is seeking to quiet his title to a certain parcel of property, but has failed to indicate the address of the taxpayer and the Internal Revenue Office which filed the tax lien as required by 28 U.S.C. 2410.

SECOND DEFENSE

Further answering the complaint the United States alleges:

2. It admits the allegation contained in Paragraphs 1, 3, and 5 of plaintiff's complaint.

3. It is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 6, 7, and 8 of plaintiff's complaint.



4. It admits that the plaintiff was the holder of the equity of redemption as alleged in Paragraph 4 of plaintiff's complaint but it denies that plaintiff effectively redeemed the property for the reason enumerated in the Government's third defense.

5. It admits the allegations contained in Paragraph 2 of the plaintiff's complaint and further alleges that the notices of tax lien dated December 7, 1973 and March 29, 1974 were released by the District Director of the Internal Revenue Service. The United States further alleges that on the dates set forth below, the District Director of the Internal Revenue, a delegate of the Secretary of the Treasury, made assessments against the Equinox House, Inc. for unpaid Withholding and Federal Insurance Contribution Act taxes (FICA) in a total amount of \$19,920.77, plus statutory additions. The aforementioned assessments are fully described as follows:

<u>Type of Tax &amp; Period</u>	<u>Date of Assessment &amp; Notice and Demand</u>	<u>Amount of Assessment</u>	<u>Date Notice of Lien Filed</u>
1st Qtr. 1973 WH & FICA	7/30/73	\$ 5,722.92 (1) 495.35 (2) 992.69 (3) 49.63 (4) 148.90 (6) 172.32	9/18/73 (5)
2nd Qtr. 1973	8/28/73	11,484.24 (1) 718.96 (2) 718.96 (4) 63.81	9/18/73 (5)
TOTAL -		\$ <u>19,920.77</u>	(plus statutory additions as provided by law)

- (1) Penalty asserted pursuant to Internal Revenue Code of 1954, Section 6656(a) failure to deposit penalty.
- (2) Penalty asserted pursuant to Internal Revenue Code of 1954, Section 6656(a) delinquency penalty.
- (3) Penalty asserted pursuant to Internal Revenue Code of 1954, Section 6651(a) failure to pay tax penalty.
- (4) Interest.
- (5) Notice of Federal Lien filed at Office of Town Clerk, Manchester, Vermont.
- (6) Lien fees and collection costs.

THIRD DEFENSE

6. The property was not sold pursuant to a judicial sale within the meaning of 28 U.S.C. 2410.

7. It filed a Notice of Tax Lien on September 18, 1973, which was prior to the date plaintiff attempted to effectively redeem the said property i.e., June 12, 1974.

8. That Section 7425(b)(1) of the Internal Revenue Code of 1954 (26 U.S.C.) is controlling and provides that when a nonjudicial sale is held and the Government's tax lien is filed more than 30 days prior to the date of sale, the District of Internal Revenue Service must be given notice of the sale as prescribed in Section 7425(c) of the Internal Revenue Code.

9. That the District Director was not given notice of the sale by plaintiff and since the Government's tax lien was filed more than 30 days prior to the date of sale, the sale was made subject to and without disturbing the Government's lien.

GEORGE W.F. COOK  
United States Attorney

By:

---

Assistant United States Attorney

OF COUNSEL:

*Vincent J. Ferraro*  
VINCENT J. FERRARO  
Trial Attorney - Tax Division  
U.S. Department of Justice  
Washington, D. C. 20530  
Telephone: (202) 739-3055



UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Francesco Galesi

v.

United States of America

Civil Action

File No. 75-85

[Filed January 12, 1976]

MEMORANDUM AND ORDER

This is a civil action brought by landowner, Francesco Galesi, seeking to quiet title to a parcel of real property (the Equinox House) located in Manchester, Vermont. Suit was brought on February 27, 1975, in the Superior Court at Bennington, Vermont, in accordance with the prescribed Vermont procedures. The defendant removed the action to this court as provided in 28 U.S.C. § 1444.

The parties are agreed that the facts giving rise to the competing claims of the parties are, in all material respects, undisputed and that disposition by summary judgment is appropriate. On September 10, 1973, the Chemical Bank held two mortgages on the Equinox House and instituted an action in the Bennington Superior Court to foreclose on the mortgages. Chemical Bank v. The Equinox House, Inc., Civil No. C-94-73-BC (Benn. Sup. Ct. filed Sept. 10, 1973). All other lienholders, at the date of filing suit, were joined as defendants to the foreclosure proceeding. Under the law of Vermont, persons acquiring a lien on the property, subsequent to the date suit was properly filed, are deemed to have notice of the pendency of the action, by the filing of the complaint in the town clerk's office of the town where the mortgaged property is located (in this instance, Manchester, Vermont). <sup>1/</sup> The Internal Revenue Service filed a notice of tax lien against the Equinox House, Inc., in the office of

the town clerk of Manchester, Vermont, on September 18, 19<sup>2/</sup>73.

The Federal Tax Lien Act of 1966 made provision in the Internal Revenue Code for the United States to intervene in a civil action, to which it was not otherwise a party, to assert a tax lien arising on the property which is the subject of the action. Upon such an intervention, the provisions of 28 U.S.C. §§ 1444 and 2410 (except subsection b) shall apply as if the United States had been named a defendant in the action. If the application to intervene is denied, the adjudication in the civil action shall have no effect on the federal lien.<sup>3/</sup> The Government did not intervene in the suit brought by the Chemical Bank in Bennington Superior Court.

A judgment order of foreclosure was entered on February 11, 1974, by the Bennington Superior Court and the various lienors were assigned particular periods for redemption. On June 12, 1974, the plaintiff, having been assigned the right of redemption of a creditor, Sports Investors, Inc., timely redeemed the property by paying \$1,281,045.54 to the deputy clerk of the Superior Court for the benefit of the Chemical Bank.

Several months later the Internal Revenue Service posted notice of public sale of the Equinox House, contending that the earlier judgment order of foreclosure did not discharge its lien against the property for taxes owed by the Equinox House, Inc. At the request of the plaintiff, the public sale was postponed so that discussions could be conducted with the Internal Revenue Service regarding the parties respective rights in the property. The discussions were of no avail to the plaintiff and this action ensued.

The case is presently before the court on cross motions for summary judgment. Since there are no material issues of



fact at issue and the only question before us is the proper application of 26 U.S.C. § 7425 (1970) to the facts, summary judgment is an appropriate vehicle for disposition of the action.

The single question presented is whether the provisions of 26 U.S.C. § 7425(a) control, in which case the federal tax lien has been discharged; or whether 26 U.S.C. § 7425(b) governs and the Government's lien remains undisturbed. The text of the statute appears in the margin.<sup>4/</sup>

Prior to the Tax Lien Act of 1966,<sup>5/</sup> the federal government was confronted with the problem of having its junior tax liens discharged on the foreclosure of senior liens without having had notice of the proceedings. Such foreclosures occurred either in a plenary judicial action or by non-judicial foreclosure, as for example the execution of a power of sale contained in a senior security instrument. In cases where the interests of a junior lienor could be eliminated without notice, the government was prevented from taking steps to protect its interests in collection of revenues. See S. Rep. No. 1708, 89th Cong., 2d Sess. (1966).

For this reason, the Tax Lien Act of 1966 added provisions to the Internal Revenue Code designed to protect the United States, where it is a junior lienholder, from having its lien extinguished without having had notice of judicial and nonjudicial foreclosure proceedings. Id. These provisions supplement 28 U.S.C. § 2410(a) by providing a uniform set of federal rules for determining the effect of such foreclosure proceedings upon a junior tax lien.

The first of these rules, 26 U.S.C. § 7425(a) (appearing at note 4) applies where the United States is not joined as a party and there is a judgment in a civil action, as described in 28 U.S.C. § 2410(a) or a sale pursuant to such a

judgment. The effect of such a judgment or judicial sale depends upon whether or not a notice of the federal tax lien has been filed before the action was commenced. If the notice has been filed the judgment or judicial sale is made subject to the federal tax lien. If the notice has not been filed prior to the commencement of the action, the judgment or judicial sale has the same effect with regard to discharge of the tax lien as is provided by local law.

The effect of nonjudicial sale of property, on which the United States claims a lien, is governed by the subsection which follows. 26 U.S.C. § 7425(b). The effect of a nonjudicial sale depends upon whether proper notice of sale is given the government. It is undisputed here that the notice of sale, required by section 7425(b), was not given the government prior to plaintiff's redemption of the Equinox House on June 12, 1974.

The predicate of the position taken by the United States to a dominant priority is that section 7425(b) controls this case, since the plaintiff's title was obtained by a strict foreclosure proceeding in Chemical Bank v. The Equinox House, Inc., supra, and hence not a judicial proceeding within the provisions of section 7425(a). The defendant goes on to advance the contention that a judicial proceeding discharging a federal tax lien must be brought in the manner prescribed by 28 U.S.C. § 2410. This section provides that in actions to quiet title or foreclose a mortgage on property on which the United States claims a lien, the judgment

shall have the same effect respecting the discharge of the property/<sup>from</sup> the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated. However, an action to foreclose a mortgage or other lien, naming the United States as a party under this section, must seek judicial sale.

Since there was no "judicial sale" involved in the decree of



foreclosure of the Bennington Superior Court, and no notice of the redemption by the plaintiff, the Government contends its tax lien is not disturbed by the foreclosure and the plaintiff's interest is subject to the tax lien under section 7425(b)<sup>6/</sup>.

This reasoning obscures the fact that the United States had notice of the foreclosure action, yet it did not intervene in the state foreclosure action as it could have done by resort to 28 U.S.C. § 7424.

Had the federal taxing authority intervened under this provision of the federal statutes, its rights could have been fully and adequately protected, including the right to a judicial sale by virtue of 28 U.S.C. § 2410 and the applicable law of Vermont that is specifically designed, as a strict foreclosure exception, to protect federal interests in property that are subject to foreclosure. 28 V.S.A. § 4531 (Added 1973, No. 47 § 1 eff. April 12, 1973).<sup>7/</sup> It appears that the defendant, having elected not to avail itself of the protection afforded by both state and federal statutes, seeks to avoid any adverse effect of the plaintiff's senior interest adjudicated in the state proceedings. Section 7424 provides that the state adjudication is to be thwarted where the United States has made application to intervene and its application has been denied. 28 U.S.C. § 7424. Such is not the case presented here.

Quite clearly, had the defendant intervened, its interest as a junior lienor would have been established with the correlative right to a judicial sale of the subject property. Having ignored the provisions designed to protect those interests, it cannot now gain a position of ascendancy which would override the plaintiff's redemption of the property in a proceeding in which the defendant elected not to enter.

In the context of the present record, the initiative was cast upon the United States. It cannot complain that it was not made a party to the foreclosure proceedings in the state court, for at the time the action was begun the Government had not asserted its lien.

The defendant contends that as a result of the Congressional charges made in 1966, a federal tax lien may be discharged or diverted under local law only in the manner prescribed in 28 U.S.C. § 2410 or 26 U.S.C. § 7425. However, the 1966 Amendment invoked the provisions of Section 2410 - "in any case in which the United States intervenes as if the United States had originally been named a defendant." 26 U.S.C. § 7424. The provisions of Section 2410 are not invoked nor applicable, since the defendant did not seek to intervene.

The provisions of 26 U.S.C. § 7425(a) relate to sales resulting from plenary judicial proceedings in which the United States is not joined as a party. The pendency of judicial proceedings, in which the United States is not joined, provides a vehicle for the Government to intervene to protect its interest, as provided in 26 U.S.C. § 7424, if it elects to do so. Subsection b of 7425 applies in cases where the sale of the subject property is made outside the framework of plenary judicial action. Here the plaintiff's redemption of the mortgaged property was accomplished in response to the judgment of foreclosure entered in the state proceedings.

This case does not present a situation which the Tax Lien Act of 1966 was designed to afford defendant protection. As stated above, the Congressional purpose in the enactment was to prevent the discharge of subsequent and subordinate federal tax liens without notice to the federal taxing

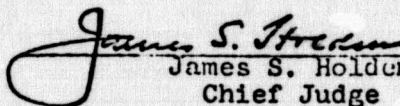


authority. Here the United States had, at the least, constructive notice pursuant to 12 V.S.A. § 4523(b). The defendant is not only seeking a second opportunity to collect its delinquent taxes, but seeks to achieve an advantage superior to that available had it sought intervention. The language and intent of section 7425(a) indicate that if notice of the federal tax lien has not been filed at the commencement of a state foreclosure proceeding, in which the government is not a party, the judgment in that proceeding discharges a junior federal tax lien, if state law so provides, whether or not the federal lien is later perfected. See United States v. Von Cseh, 354 F.Supp. 315, 319 (S.D. Tex. 1972).

The United States has not been denied the opportunity to protect its interest in the Equinox House. Having chosen not to intervene in the state foreclosure action under 26 U.S.C. § 7424, its lien against the property was discharged by the judgment in the state action. 26 U.S.C. § 7425(a)(2). See S. Rep. No. 1708, 89th Cong., 2d Sess. (1966), supra.

It is ORDERED: The defendant's motion for summary judgment must be denied; the plaintiff's motion for summary judgment is granted. The Clerk is directed to enter an order accordingly.

Dated at Rutland, in the District of Vermont, this 12<sup>th</sup> day of January, 1976.

  
James S. Holden  
Chief Judge



Footnotes

1/ 12 V.S.A. § 4523 provides in part:

- (b) The plaintiff shall file a copy of the complaint in the town clerk's office in each town where the mortgaged property is located. The clerk of the town shall minute on the margin of the record of the mortgage that a copy of foreclosure proceedings on the mortgage is filed. The filing shall be sufficient notice of the pendency of the action to all persons who acquire any interest or lien on the mortgaged premises between the dates of filing the copy of foreclosure and the recording of the final judgment in the proceedings. Without further notice or service, those persons shall be bound by the judgment entered in the cause and be foreclosed from all rights or equity in the premises as completely as though they had been parties in the original action.

2/ Similar filings were made by the Internal Revenue Service in the Manchester town clerk's office on December 7, 1973, and March 29, 1974.

3/ 26 U.S.C. § 7424 (1970):

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under this title on the property which is the subject of such action or suit. The provisions of section 2410 of title 28 of the United States Code (except subsection (b)) and of section 1444 of title 28 of the United States Code shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. In any case in which the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

4/ In pertinent part 26 U.S.C. § 7425(a) and (b) read:

- (a) Judicial proceedings. - If the United States is not joined as a party, a judgment in any civil action or suit described in subsection (a) of section 2410 of title 28 of the United States Code, or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of this title -
- (1) shall be made subject to and without disturbing the lien of the United States, if notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced, or
  - (2) shall have the same effect with respect to the discharge or divestment of such lien of the United States as may be provided with respect to such matters by the local law of the place where such property is situated,



if no notice of such lien has been filed in the place provided by law for such filing at the time such action or suit is commenced or if the law makes no provision for such filing.

If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of this title, the United States may claim, with the same priority as its lien had against the property sold, the proceeds (exclusive of costs) of such sale at any time before the distribution of such proceeds is ordered.

(b) Other sales. - Notwithstanding subsection (a) a sale of property on which the United States has or claims a lien, or a title derived from enforcement of a lien, under the provisions of this title, made pursuant to an instrument creating a lien on such property, pursuant to a confession of judgment on the obligation secured by such an instrument, or pursuant to a nonjudicial sale under a statutory lien on such property -

(1) shall, except as otherwise provided, be made subject to and without disturbing such lien or title, if notice of such lien was filed or such title recorded in the place provided by law for such filing or recording more than 30 days before such sale and the United States is not given notice of such sale in the manner prescribed in subsection (c)(1);

5/ Act of November 2, 1966, Pub. L. No. 89-719, Title I, II, 80 Stat. 1140-41, 1147.

6/ In support of the Government's position that Section 7425(b) controls this case, it contends that Treas. Reg. § 400.4-1(b)(2) Example (3) (1968), an illustration of a foreclosure procedure that should be considered a "non-judicial sale" under Section 7425(b), is applicable here. Since the example relied on involves foreclosure under a certificate of entry, rather than foreclosure pursuant to a judicial proceeding, we view it as being inapposite to this proceeding.

7/ 12 V.S.A. § 4531 provides:

In an action for foreclosure, if a lien or interest in such realty is held by any person or federal agency which may not be foreclosed by strict foreclosure pursuant to federal law, a decree may be entered providing for such period of redemption as the court may determine, and providing for sale of the mortgaged premises at the conclusion of such period if said premises are not redeemed . . . .

**United States District Court**

FOR THE

DISTRICT OF VERMONT

CIVIL ACTION FILE NO. **75-85**

**Francesco Galesi**

vs.

**United States of America Internal Revenue  
Service**

**JUDGMENT**

**[Filed January 15, 1976]**

This action came on for trial (hearing) before the Court, Honorable **James S. Holden**,  
Chief, United States District Judge, presiding, and the issues having been duly tried  
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that Defendant's Motion for Summary Judgment is  
denied; Plaintiff's Motion for Summary Judgment is granted.

Dated at **Burlington, Vermont** , this **15th** day  
of **January** , 19 **76**.

/s/ **EDWARD J. TRUDELL**  
Clerk of Court

**BEST COPY AVAILABLE**



Endorsed: Filed March 10, 1976  
George L. LaVictoire  
Deputy Clerk

- 20 -

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT

FRANCESCO GALESI,

Plaintiff

v.

UNITED STATES OF AMERICA,  
et al.,

Defendants

CIVIL NO. 75-85

NOTICE OF APPEAL

Notice is hereby given that the United States of America appeals to the United States Court of Appeals for the Second Circuit from the judgment of this Court entered on the 15th day of January, 1976.

GEORGE W. F. COOK  
United States Attorney

By:

*George F. O'Hall*  
Assistant United States Attorney

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of March, 1976 mailed a copy of the attached Notice of Appeal to R. Marshall Witten, Esq., counsel for plaintiff.

*John R. Hughes, Jr.*  
~~George F. O'Hall~~  
Assistant U.S. Attorney  
John R. Hughes, Jr.

CERTIFICATE OF SERVICE

It is hereby certified that service of this record appendix has been made on opposing counsel by mailing four copies thereof on this 7<sup>th</sup> day of May, 1976, in an envelope with postage prepaid, properly addressed to him as follows:

R. Marshall Witten, Esquire  
P. O. Box 350  
Bennington, Vermont 05201

*Gilbert E. Andrews*

GILBERT E. ANDREWS,  
Attorney.